

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

VICTOR ARMANDO LOZA,

Plaintiff and Appellant,

v.

JANISE MAN ANDERSON,

Defendant and
Respondent.

B286323

(Los Angeles County
Super. Ct. No. BC573201)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Peter J. Mirich, Judge. Affirmed.

Khorshidi Law Firm, Omid Khorshidi and Robert L.
Bastian Jr. for Plaintiff and Appellant.

Ford, Walker, Haggerty & Behar, Daniel N. Stein and
Adam C. Hackett for Defendant and Respondent.

Victor Armando Loza appeals from a judgment on a jury verdict awarding him a total of \$60,000 in damages for personal injuries he suffered when the car he was driving was rear-ended by another vehicle. Loza sought over \$1.87 million in damages. The trial court denied Loza's motion for a new trial.

Loza contends the damages awarded are too low, and the court erred by denying his new trial motion. He argues the evidence does not support the round amount of total damages awarded. Instead, he argues, the circumstances indicate the jury failed to determine a precise amount of past medical expenses and instead hurriedly arrived at an arbitrary number.

We conclude the court properly denied the new trial motion and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

1. Loza's Injury and Medical Care

Loza was driving a Honda Fit on May 30, 2013, sometime between 10:30 p.m. and 11:00 p.m. He was wearing a seatbelt. He had come to a complete stop when he heard tires screeching behind him and felt a blow to the back of his car. The impact pushed his car forward, causing him to crash into the car in front of him. His car was a total loss.

Loza spoke with the police at the scene. He did not go to the hospital that evening. Instead, his son picked him up and took him home. That night Loza felt nervousness and pain and took over-the-counter pain medications.

He went to the hospital the next day, reporting pain in his shoulder, neck, knee, and back. X-rays were taken, and he was

given pain medication. Loza later visited his personal physician, who prescribed medication and physical therapy.

After two months of physical therapy, his doctor referred Loza to a pain clinic, South Bay Pain Doctors. Loza received chiropractic treatment and physical therapy. He received several injections to his back, receiving his last injection on November 1, 2013, when his treatment stopped.

Loza returned to South Bay Pain Doctors in March 2015 complaining of lower back pain and leg cramps. He received further injections starting in August 2015.

2. *The Trial and Verdict*

Loza filed a complaint against Anderson alleging causes of action for general negligence and motor vehicle negligence. The case was tried to a jury. Anderson admitted negligence but denied causing damages to the full extent claimed by Loza.

Adam Weitzman, M.D., testified as a treating physician and an expert witness for Loza. Dr. Weitzman testified the car accident was the cause of the pain Loza suffered in the months following the accident, in March 2015, and after that date. Dr. Weitzman testified Loza's prior episode of back pain in March 2010 was resolved before the accident and did not cause any continuing injury.¹

James Loddengaard, M.D., testified as an expert witness for the defense. In his opinion, the medical care Loza received was reasonable and necessary from Loza's first visit to the hospital on the day after the accident through the injections

¹ Loza testified he felt pain in his back and shoulder after being kicked in a soccer game in March 2010. He also suffered a knee injury later in 2010 and underwent knee surgery.

ending on November 1, 2013, but some of the charges were excessive. He identified various reasonable and necessary charges totaling over \$23,000. Dr. Loddengaard opined the accident did not cause the pain Loza experienced in March 2015 and thereafter.

Loza sought a total of \$1,874,409.56 in damages, consisting of \$119,929.56 for past economic loss, including \$118,445.56 for past medical expenses and \$1,484 for loss of earnings; \$121,040 for past noneconomic loss; \$715,920 for future economic loss; and \$917,520 for future noneconomic loss.

The defense argued Loza's injuries caused by the accident had resolved as of November 2013, and Anderson was not responsible for Loza's economic and noneconomic losses after that date. The defense also argued the appropriate amount of damages was \$37,803.57, consisting of \$23,803.57 for past economic loss, including \$22,323.57 for past medical expenses and \$1,484 for loss of earnings; \$14,000 for past noneconomic loss; \$0 for future economic loss; and \$0 for future noneconomic loss.

The jury began deliberations on a Friday afternoon. After deliberating for less than two hours, the jury returned a special verdict finding Anderson's negligence had caused Loza to suffer a total of \$60,000 in damages, consisting of \$46,000 for past economic loss, including \$44,516 for past medical expenses and \$1,484 for loss of earnings; \$14,000 for past noneconomic loss; \$0 for future economic loss; and \$0 for future noneconomic loss. The jurors' vote was unanimous on all questions.

The trial court entered a judgment on the special verdict, awarding Loza a total of \$60,000 in damages against Anderson.

3. *The New Trial Motion*

Loza moved for a new trial on grounds of inadequate damages, insufficiency of the evidence to support the verdict, error in law, irregularity in the proceedings, jury misconduct, and accident or surprise. He filed a declaration by his attorney authenticating portions of the reporter's transcript and stating the jury had deliberated for only two hours, and filed no other affidavits or declarations. Loza argued the court should order a new trial on damages subject to the condition the new trial motion would be denied if Anderson consented to increase damages to \$236,891.12. Anderson opposed the motion.

The trial court denied the new trial motion. The order denying the motion stated the court had re-examined and weighed the witnesses' testimony and was not convinced the jury clearly should have reached a different verdict. It stated the court had considered and rejected each of the asserted grounds for new trial.²

DISCUSSION

1. *Governing Law and Standard of Review*

A trial court may grant a new trial on any of several statutory grounds, including, as relevant here, inadequate damages, insufficiency of the evidence to support the verdict, error in law, irregularity in the proceedings, jury misconduct, and accident or surprise. (Code Civ. Proc., § 657, subds. (1), (2), (3),

² Loza filed a notice of appeal from both the judgment and the order denying a new trial. The denial of a new trial motion is not an appealable order. (*Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 18.) The proper appeal is from the judgment alone. (*Ibid.*)

(5), (6) & (7).) A trial court has wide discretion in ruling on a new trial motion, and the court's exercise of discretion is given great deference on appeal. (*Los Angeles v. Decker* (1977) 18 Cal.3d 860, 871-872 (*Decker*); *King v. State of California* (2015) 242 Cal.App.4th 265, 296 (*King*).)

Code of Civil Procedure section 657 states: 'A new trial shall not be granted upon the ground of insufficiency of the evidence to justify the verdict or other decision, nor upon the ground of excessive or inadequate damages, unless after weighing the evidence the court is convinced from the entire record, including reasonable inferences therefrom, that the court or jury clearly should have reached a different verdict or decision.' ” Thus, a trial court ruling on grounds of insufficiency of the evidence to justify the verdict or inadequate damages must review the entire record, weigh the evidence, and order a new trial only if the court is convinced the verdict is clearly wrong.

We generally review the denial of a new trial motion for abuse of discretion. (*Decker, supra*, 18 Cal.3d at pp. 871-872; *King, supra*, 242 Cal.App.4th at p. 296.) “An abuse of discretion occurs if, in light of the applicable law and considering all of the relevant circumstances, the court's decision exceeds the bounds of reason and results in a miscarriage of justice. [Citations.] Accordingly, we can reverse the denial of a new trial motion based on insufficiency of the evidence or [inadequate or] excessive damages only if there is no substantial conflict in the evidence and the evidence compels the conclusion that the motion should have been granted.' [Citation.]” (*Rayii v. Gatica* (2015) 218 Cal.App.4th 1402, 1415-1416.)

2. *The Trial Court Properly Denied the New Trial Motion*

Loza contends the trial court erred by denying his new trial motion on grounds of inadequate damages, insufficiency of the evidence to support the verdict, error in law, irregularity in the proceedings, jury misconduct, and accident or surprise. In support of each of these grounds other than accident or surprise, he argues the circumstances compel the conclusion the jury failed to comply with its duty to deliberate and instead returned an arbitrary and inadequate damages award.

Loza argues the round amount of \$60,000 awarded by the jury indicates it first settled on that amount and then “impermissibly calculated backwards to make the amount awarded for special damages fit.” He argues the defense medical expert conceded causation and the reasonableness of medical treatment up to the point of the November 2013 injections, so damages should have been “precise to that point, and more than the jury actually awarded.” He argues the fact the jurors deliberated for only two hours on a Friday afternoon indicates they failed to deliberate so they could go home early for the weekend. Loza contends these circumstances, together with the failure to award future damages “when future damages were likely indicated,” compel the conclusion the jury failed to deliberate and acted arbitrarily.

The circumstances cited by Loza do not compel the conclusion the jury failed to faithfully discharge its duty to evaluate the evidence and determine the amount of damages. A plaintiff is entitled to reasonable compensation for the harm caused by the defendant, but the amount of damages need not be calculated with absolute certainty or precision, as the trial court properly instructed the jury. (*Sargon Enterprises, Inc. v.*

University of Southern California (2012) 55 Cal.4th 747, 774.) The expert testimony regarding the reasonable cost of necessary medical care provided was in conflict. The jury's finding of \$46,000 in past medical expenses was less than the amount stated by Loza's expert and more than the amount stated by the defense expert. The evidence conflicted concerning whether Loza would suffer any future economic or noneconomic loss. After re-examining and weighing the evidence, the trial court reasonably concluded the verdict was not clearly wrong. Loza has shown no abuse of discretion.

We conclude the trial court properly denied the new trial motion on grounds of inadequate damages, insufficiency of the evidence to support the verdict, error in law, irregularity in the proceedings, and jury misconduct.³

Regarding accident or surprise, Loza argues he was unfairly surprised by Dr. Loddengaard's trial causation opinion, which was based in part on unidentified "studies." Loza argues the testimony conflicted with Dr. Loddengaard's deposition testimony expressing uncertainty about the extent to which

³ Code of Civil Procedure section 658 states a new trial motion on grounds of irregularity in the proceedings, jury misconduct, accident or surprise, or newly discovered evidence "must be made upon affidavits; otherwise it must be made on the minutes of the court." (See *Gardner v. Marshall* (1944) 24 Cal.2d 686, 690; *Crespo v. Cook* (1959) 168 Cal.App.2d 360, 363.) We need not rely on this provision or decide whether the declaration by Loza's counsel satisfied the affidavit requirement because we conclude the trial court properly denied the new trial motion on the merits.

Loza's injuries could be attributed to natural aging.⁴ We need not decide whether this amounts to accident or surprise warranting a new trial because the issue was not preserved.

To preserve accident or surprise as a ground for a new trial a party must alert the trial court to the accident or surprise and move for a mistrial or request a continuance. (*Kauffman v. De Mutiis* (1948) 31 Cal.2d 429, 432; *Garcia v. County of Los Angeles* (1986) 177 Cal.App.3d 633, 637-639 (*Garcia*), disapproved on another point in *People v. Ault* (2004) 33 Cal.4th 1250, 1272.) “[W]here a situation arises which might constitute legal surprise, counsel cannot speculate on a favorable verdict. [Counsel] must act at the earliest possible moment for the ‘right to a new trial on the ground of surprise is waived if, when the surprise is discovered, it is not made known to the court, and no motion is made for a mistrial or continuance of the cause.’ [Citations.]” (*Kauffman*, at p. 432.) *Garcia* reversed an order granting a new trial based on the absence of a defense witness where the defendants advised the trial court their witness was not present but failed to request a continuance or object to proceeding with trial. (*Garcia*, at pp. 638, 642.) Loza did not move for a mistrial or request a continuance and therefore forfeited accident or surprise as a ground for a new trial.

⁴ To the extent Loza argues Dr. Loddengaard's testimony was inadmissible because his opinion on causation was contrary to California law, Loza did not object on that ground in the trial court and therefore forfeited any claim of error. (Evid. Code, § 353, subd. (a).)

DISPOSITION

The judgment is affirmed. Anderson is entitled to costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

CURREY, J.

WE CONCUR:

MANELLA, P. J.

COLLINS, J.